

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0394
Adjusted Gross Income Tax—Business Income
Penalty—Request for Waiver
For Tax Years 1998 & 1999

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ISSUES

I. Adjusted Gross Income Tax—Business Income

Authority: IC § 6-8.1-5-1(b); IC § 6-3-2-1(a); IC § 6-3-2-2(a); 45 IAC 3.1-1-25; 45 IAC 3.1-1-29; 45 IAC 3.1-1-38

Taxpayer protested the proposed assessment of Indiana's adjusted gross income tax on income earned from doing business in the state of Indiana.

II. Penalty—Request for Waiver

Authority: IC § 6-8.1-10-2.1(a); 45 IAC 15-11-2(b)

Taxpayer requested a waiver of the 10% negligence penalty.

STATEMENT OF FACTS

Taxpayer, a resident of Michigan, was a retailer of sports trading cards, collectibles, and other memorabilia; he also promoted shows at shopping malls in Indiana and Michigan. Taxpayer solicited participation at the shows from other dealers and arranged for the use of display space within the malls with managers and/or landlords; he also arranged for the necessary insurance coverage for the shows. Taxpayer advertised the shows in local newspapers, prepared flyers and rented tables and chairs needed for the shows from rental companies. Taxpayer then collected rental fees from the dealers attending the shows for use of the tables and chairs. Taxpayer also participated in selling cards and memorabilia at the shows. Taxpayer's retail store was located in Michigan. He was the sole proprietor, and filed schedule C with his federal income tax returns to report all business income and expenses. Taxpayer failed to file Indiana income tax returns for business receipts from Indiana sources for the tax years at issue.

Taxpayer timely protested the proposed assessment. The Department attempted to contact taxpayer regarding facts supporting the protest, but all correspondence was returned unopened with a handwritten message indicating taxpayer had passed away. The file was then sent to the Appeals Section. The Hearing Officer made numerous attempts to contact the Power of Attorney (POA) of record, obtain a new POA form from the apparent new POA, and to contact taxpayer's widow. There were also numerous telephone calls between the Hearing Officer and the apparent new POA, attempting to obtain information to resolve the protest and/or schedule a hearing. The Hearing Officer made one final attempt to contact the apparent POA, giving a date certain by which to respond. The Department has received nothing to date. Additional facts will be supplied as necessary.

I. Adjusted Gross Income Tax—Business Income

DISCUSSION

Taxpayer protested the proposed assessment of Indiana's adjusted gross income tax on business receipts derived from Indiana sources.

Pursuant to IC § 6-8.1-5-1(b), an Indiana Department of Revenue "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Despite numerous attempts to obtain information from taxpayer, his widow, and two Powers of Attorney (one of record, the other apparent), the Department has not received any information or facts on this protest. Therefore, this Letter of Findings is based on all materials contained in the file, plus all relevant Indiana tax statutes and regulations.

IC § 6-3-2-1(a) imposes the adjusted gross income tax "on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-2(a)(2) and (3) set forth a nonresident's adjusted gross income tax liability:

(a)With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

(2) income from doing business in this state;

(3) income from a trade or business in this state;

See also, 45 IAC 3.1-1-25.

Taxpayer, during the tax years at issue, received income from renting tables and chairs for use at Indiana sports memorabilia shows, and from selling his own merchandise at these shows. The audit indicates these shows were held at shopping malls in the following Indiana cities: Kokomo, Anderson, Muncie, Marion, Lafayette, and South Bend.

45 IAC 3.1-1-29 defines “business income” as “income from transactions and activity in the regular course of the taxpayer’s trade or business.” 45 IAC 3.1-1-38 provides in pertinent part:

Sec. 38. Doing Business. For apportionment purposes, a taxpayer is “doing business” in a state if it operates a business enterprise or activity in such state including, but not limited to:

- (1) Maintenance of an office or other place of business in the state
- (2) Maintenance of an inventory of merchandise or material for sale distribution, or manufacture, or consigned goods
- (3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution
- (4) Rendering services to customers in the state
- (5) Ownership, rental or operation of a business or of property (real or personal) in the state
- (6) Acceptance of orders in the state
- (7) Any other act in such state which exceeds the mere solicitation of orders so as to give the state nexus under P.L.86-272 to tax its net income.

Taxpayer’s regular trade or business activities in Indiana fall within the strictures of 45 IAC 3.1-1-38. Taxpayer brought merchandise into the state and sold it, rented the tables and chairs and collected fees from other dealers who also sold their merchandise at these sports memorabilia shows. Therefore, any income taxpayer earned from his Indiana activities should have been reported to the state of Indiana via Indiana tax returns.

The audit determined, based on the best information available, taxpayer’s adjusted gross income tax liability from taxpayer’s federal returns for the tax years at issue because taxpayer had failed to file Indiana tax returns for income earned from conducting sports memorabilia shows in Indiana. Neither taxpayer nor his representatives have supplied any facts to contradict the proposed assessment. While taxpayer is apparently deceased, outstanding tax liabilities remain.

FINDING

Taxpayer’s protest concerning the proposed assessment of Indiana’s adjusted gross income tax on income earned from doing business in the state of Indiana is denied.

I. Penalty—Request for waiver

DISCUSSION

Taxpayer protested the imposition of the 10% negligence penalty on the entire assessment. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due. Taxpayer’s representative stated in the Letter of Protest and at the hearing that taxpayer relied on the information obtained from the Indiana Bureau of Motor Vehicles, and that the failure to pay the proper amount of tax was due to that state agency’s interpretation of Indiana’s statutes, regulations, and case law.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed. . . ." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer has not set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, waiver of the penalty on the entire assessment is inappropriate in this particular instance.

FINDING

Taxpayer's protest concerning the proposed assessment of the 10% negligence penalty is denied.